

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16053 of Mr. and Mrs. William P. Bowden, on behalf of the Republic of Turkmenistan, pursuant to 11 DCMR 1001, for permission under Section 1002 to locate a chancery in a D/R-3 District at premises 2207 Massachusetts Avenue, N.W. (Square 2512, Lot 4).

HEARING DATE: June 21, 1995

DECISION DATE: July 19, 1995

ORDER

INTRODUCTION

This application was filed by Mr. and Mrs. William P. Bowden on behalf of the Republic of Turkmenistan, pursuant to Section 206 of the Foreign Missions Act (Title 11, Public Law 97-241, 92 Stat. 286, August 24, 1982) to locate its chancery at 2207 Massachusetts Avenue, N.W. (Square 2512, Lot 4) in a D/R-3 District. The application was considered by the Board in accordance with the requirements of Chapter 10 of the Zoning Regulations. Chapter 10 was adopted by the Zoning Commission to implement Section 206 of the Foreign Missions Act. The public hearing was conducted as a rulemaking proceeding under Chapter 33 of the Supplemental Rules of Practice and Procedure before the Foreign Missions Board of Zoning Adjustment.

PROCEDURAL ISSUE

As a preliminary matter, the Office of Zoning informed the Board that the Notice of Proposed Rulemaking required by 11 DCMR Section 3340.9(c) had not been published in the D.C. Register. Therefore, the Office of Zoning recommended postponement of the public hearing, in order to allow for publication of the Notice of Proposed Rulemaking at least 40 days prior to a new hearing date for this application.

The Applicant opposed the postponement and requested a waiver of that provision, pursuant to the Board's authority under 11 DCMR Section 3301.1. That section allows the Board, for good cause shown, to waive its own rules, if in the judgment of the Board the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. There are no parties to a chancery application. (See Section 3340.6). The Department of State joined with the Applicant in opposition to the postponement and in support of the waiver.

As further set forth below, the Board finds that a waiver of Section 3340.9(c) will not prejudice the rights of any person with an interest in the application, and is not otherwise prohibited by law.

The applicable law is found in D.C. Code Section 1-1506(a) (1992 Repl.). That section requires that, in a rulemaking proceeding, the agency publish notice of the proposed action not less than 30 days prior to the effective date of the proposed adoption, except as otherwise provided by the agency upon good cause found and published with the notice. That section also requires that interested persons be given an opportunity to submit data and views either orally or in writing, as may be specified by such notice. The Board finds that the above-referenced D.C. Code provision governing rulemaking notices does not prohibit a waiver of Section 3340.9(c).

The Board finds good cause for granting the requested waiver. In order to meet the 40 day deadline of Section 3340.9(c), the Notice of Proposed Rulemaking should have appeared in the May 12, 1995 issue of the D.C. Register. On that same date, the Board's public hearing notice was published in the D.C. Register. That notice included the date, time and location of the public hearing, the name of the applicants, the address of the subject property and the relief requested. Additionally, the public received notice in a variety of other ways. All required notices pursuant to Chapter 33 of the Zoning Regulations were given. Referrals were also made by the Office of Zoning and the Office of Planning to a number of agencies and organizations, seeking input. Advisory Neighborhood Commission 1D held a public meeting to discuss the proposal. The Ambassador and legal counsel were present to discuss the proposal and answer questions. The Historic Preservation Review Board held a public meeting at which time the proposed exterior improvements were reviewed and approved. Finally, the Ambassador sent letters to all private property owners within 200 feet, as well as to ANC 2B, notifying them of the proposed purchase of the property for chancery use, and inviting comments and questions.

For all of the above reasons, the Board found that adequate notice of the application and the hearing have been given, and that a waiver will not prejudice the rights of any person with an interest in the application. The Board ordered that a Notice of Proposed Rulemaking be published in the June 30, 1995 edition of the D.C. Register, with an abbreviated period for written comments, until close of business on July 11, 1995. The Board allowed the Applicant to proceed with the presentation on June 21, 1995, with a decision on the application to be made at the Board's July 12, 1995 public meeting. However, the actual publication of the Notice of Proposed Rulemaking occurred in the July 7, 1995 edition of the D.C. Register with a period for written comments ending on July 17, 1995. The decision meeting was rescheduled for July 19, 1995.

APPLICATION

The subject site is rectangular in shape, and is located on the north side of Massachusetts Avenue, N.W., between Sheridan Circle and 22nd Street, N.W., in an area predominated by diplomatic uses. The site measures 25 feet in width, and 2,500 square feet in land area, and is occupied by a three-story brick row building. There is a 15-foot alley abutting the property in the rear, providing access to both 22nd and R Streets, N.W. The building is located in both the Massachusetts Avenue and the Sheridan-Kalorama Historic Districts.

The property is located along Embassy Row, in the D/R-3 zone. The site received the Diplomatic Overlay designation in 1978, pursuant to Zoning Commission Order No. 237. The vast majority of the properties fronting on Massachusetts Avenue, N.W., in the block between 22nd Street and Sheridan Circle, are devoted to diplomatic use, including the chanceries or chancery annexes of the United Arab Emirates and Greece (both in Square 2512). Across Massachusetts Avenue are the missions of Romania, Ireland, Argentina, Greece, the Bahamas, the Sudan, Togo, Turkey and Luxembourg.

Across 22nd Street from the subject square is the chancery of Bulgaria and the recently-approved chancery of Estonia. Other diplomatic uses in the subject square include the Central African Republic, Niger, Guatemala and the Coordination Council for North American Affairs (Taiwan).

The Embassy of Turkmenistan is the contract purchaser of the property, and intends to use the property for chancery purposes. The building is relatively small, measuring 3,883.76 square feet of gross floor area. The building is three stories high in the front, with two stories in the rear portion. There is space in the rear for three or four cars.

The interior of the building is suitable for the proposed chancery use. The first floor contains large open areas, including an entrance foyer area and a reception room, with two other large rooms in the rear. An open stair leads to the second floor, which contains a large foyer and two rooms. The third floor contains a library, and another large room.

The Embassy will install a flagpole, plaque and official seal on the exterior of the building. These three items have been reviewed and approved by the Historic Preservation Review Board as consent calendar items at their April 27, 1995 meeting.

The proposed use by the Embassy of Turkmenistan will be low in intensity, and will be consistent with the other diplomatic uses in the area. Currently, the Embassy of Turkmenistan has two diplomats

in the foreseeable future. The typical hours of operation of the Embassy are 9:00 a.m. to 5:00 p.m., Monday through Friday. The Embassy receives on average approximately one to two visits per day for diplomatic business. This number is not expected to increase at the new site. Most business with the public is conducted by mail, telephone, telecopy or messenger. Most visitors to the Embassy use taxis and other public transportation. The chancery is presently located at 1511 K Street, 2-1/2 blocks from the Farragut North Red Line Metrorail Station. The new site is located 2-1/2 blocks from the Dupont Circle Red Line Metrorail Station. Moreover, both the present and proposed locations are on major thoroughfares with ready access to taxis, so the current modes of visitor travel are expected to continue.

At present, one of the staff members drives the Ambassador to work, and the other diplomat and one other staff member also drive to work. The third staff member takes public transportation. This pattern is expected to continue at the new site. The parking in front of the site on Massachusetts Avenue is presently unrestricted except for no parking during evening rush hour. The Embassy intends to request diplomatic parking designation for one parking space on the curb in front of the property. The area in the rear of the building can accommodate three or four vehicles. Thus, with the ability to accommodate up to five vehicles, no additional parking would be needed for the foreseeable future. However, in the event such parking becomes necessary, there are three off-street parking facilities within 1,300 feet of the site, and a fourth that is approximately 1,350 feet from the site. In addition, there are a number of bus lines travelling in both directions on Massachusetts Avenue.

A chancery in the D/R-3 zone is a permitted use subject to Board disapproval after review based upon the six criteria enumerated in Section 206(d) of the Foreign Missions Act and Section 1001 of the Zoning Regulations.

FOREIGN MISSIONS ACT CRITERIA

In considering the subject application, the Board must apply the specific criteria set forth in Section 1001, et seq., of Chapter 10 of the Zoning Regulations. A chancery shall be a permitted use in the Mixed Use Diplomatic District, subject to disapproval by the Board based on those criteria, which are as follows:

1. Section 1001.2. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

2. Section 1001.3 and 1001.4. Historic preservation, as determined by the Board in carrying out this Section; and in order to ensure compatibility with historic landmarks and historic districts, substantial compliance with District and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.
3. Section 1001.5. The adequacy of off-street or other parking, and the extent to which the area will be served by public transportation to reduce parking requirements, subject to any special security requirements that may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.
4. Section 1001.6. The extent to which the area is capable of being adequately protected, as determined by the Secretary of State after consultation with federal agencies authorized to perform protective services.
5. Section 1001.7. The municipal interest, as determined by the Mayor.
6. Section 1001.8. The federal interest, as determined by the Secretary of State.

EVALUATION

With respect to the above-referenced six criteria set forth in the Zoning Regulations, the Board states the following:

1. The international obligation of the United States: By letter dated May 23, 1995, the Director of the Office of Foreign Missions of the Department of State, the delegated representative of the Secretary of State, determined that the international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital will be met by the approval of this application.
2. Historic preservation: The subject site is located in the Massachusetts Avenue and Sheridan-Kalorama Historic Districts, but is not an individually-designated historic landmark. The three-story plus basement masonry building was built at about the turn-of-the-century. There will be no new construction or demolition of the building. By memorandum dated May 15, 1995, the Chief of the Historic Preservation Division reported that the Historic Preservation Review Board (HPRB) recommended approval of

the Embassy's proposed additions of a flagpole, plaque and official seal as being compatible with the structure and the historic districts. The Board concurs with this recommendation. Accordingly, there will be no adverse impact on the historic preservation objectives of the District of Columbia.

3. **Parking and transportation:** The building was constructed prior to 1958. Under Chapter 21 of the Zoning Regulations, the parking requirement for chanceries is one space for each 800 square feet of gross floor area, or as determined by the Board. However, the building is exempt from that requirement as a contributing building in an historic district under Section 2100.5 of the Zoning Regulations.

Only three automobiles are associated with the operation of the chancery, and this will continue into the foreseeable future. The one staff member that does not come by car utilizes public transportation to travel to and from work. These modes of transportation will continue at the new site. There is space for three or four vehicles in the rear, with the ability to obtain an additional space at the curb. In addition, in case there is a long-term future demand for more than five parking spaces for Embassy vehicles, Embassy representatives have contacted several commercial parking garage operators in proximity to the subject site, each of which has given assurances that the parking needs of the Embassy can be met on a contract basis.

The chancery receives very little diplomatic visitor traffic (an average of one to two visits per day). All forms of business conducted by the public with the Embassy are typically conducted by mail, messenger, telephone or telecopy.

As noted by the Office of Planning and the Applicant's own expert transportation witness, the subject site is extremely well-served by public transportation. The site is located 2-1/2 blocks west of the Dupont Circle Red Line Metrorail station at 20th and Q Streets. In addition, there are numerous bus lines travelling in both directions along Massachusetts Avenue. Further, taxis are typically also available on a regular basis along the Avenue. Finally, there is a supply of short-term parking available in the neighborhood for visitors.

The Board finds that it is reasonable to conclude that any other use of this property would involve at least one, if not more, vehicles. The Board also finds that

the proposed chancery use will not create an objectionable impact on traffic and parking in the neighborhood due to the small number of personnel who drive to work, the large amount of public transportation, and the low number of visitors to the chancery.

By letter dated May 23, 1995, the Director of the Office of Foreign Missions of the U.S. Department of State, on behalf of the Secretary of State, has determined that this application meets the requirements of 22 U.S.C. Section 4306(d)(3), in that there are no special security requirements relating to parking requirements for the proposed use by the Embassy of Turkmenistan.

4. Protection: The Office of Foreign Missions, in its letter dated May 23, 1995, determined that pursuant to 22 U.S.C. Section 4306(d)(4), the site and the area are capable of being adequately protected.
5. Municipal interest: The Director of the Office of Planning (OP) for the District of Columbia, the delegated representative of the Mayor, by memorandum dated June 12, 1995, determined that the Applicant has met the burden of proof under Section 1001 and 1002 of the Zoning Regulations relative to the location of the proposed chancery in a D/R-3 zone district. OP is of the opinion that the location of the chancery as proposed is not expected to create objectionable impacts on traffic and parking conditions in the general area, and recommends approval of the application. There was no opposition to the application, either at the public hearing or in the record. The Board finds that the proposed chancery is in an area predominated by diplomatic uses, and that the proposed use will be compatible with other uses in the historic district and in the area.
6. Federal interest: By letter dated May 23, 1995, from the Director, and by testimony of the Legal Counsel, the Office of Foreign Missions has determined that the location of the chancery for the Republic of Turkmenistan at 2207 Massachusetts Avenue, N.W. is consistent with the federal interest. The government of Turkmenistan recently agreed to provide the U.S. government property rights substantially equivalent to fee simple ownership, thereby gaining the reciprocal right to own property in the United States. As a result of this agreement, the Department intends to purchase its chancery property currently under lease in Ashgabat, a process which will be significantly aided by a favorable decision by the Board in this case. As such, favorable action on this application will be in the federal interest.

ADVISORY NEIGHBORHOOD COMMISSION

The subject site is located within the boundaries of Advisory Neighborhood Commission (ANC) 1D. By letter dated April 21, 1995, ANC 1D unanimously recommended that the application be approved. The ANC vote also included approval of the proposed installation of a flagpole, plaque and coat-of-arms on the facade of the building. The ANC noted in its report that the Sheridan-Kalorama Historic District Preservation Committee also reviewed the proposal and had no objection. The Board agrees with the ANC's conclusion based upon the evidence and testimony.

The Board concludes that it has accorded "great weight" to the issues and concerns of the ANC.


DECISION

On the basis of the record before it, the Board has determined that this application satisfies the criteria set forth in Section 1001 of Chapter 10 of the Zoning Regulations. Accordingly, it is ORDERED that this application is APPROVED.

VOTE: 4-0 (Reginald Griffith, Angel F. Clarens, John G. Parsons and Craig Ellis to approve; Laura M. Richards not present, not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER:

AUG - 4 1995

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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